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TEL: 8043715969

CONTRACT NUMBER VA-010105 CFW

MODIFICATION No. 1

BETWEEN

**THE COMMONWEALTH OF VIRGINIA,
VIRGINIA INFORMATION TECHNOLOGIES AGENCY**

AND

**Clifton Forge-Waynesboro Telephone Company
d.b.a. NTELOS**

The purpose of Modification No.1 is to document the agreement between the Commonwealth of Virginia, Virginia Information Technologies Agency (VITA) and NTELOS concerning Contract Renewal.

Both above referenced parties agree to extend the term of the contract, from March 2, 2004 through March 1, 2007, with two remaining additional one-year renewal periods, to provide ISDN - PRI Services to Blue Ridge Community College, Weyers Cave, Virginia.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

NETELOS

BY: Michael L. Baker
NAME: Michael L. Baker
TITLE: Major Account Executive
DATE: 3/5/04

COMMONWEALTH OF VIRGINIA

BY: T. Moore
NAME: Timothy H. Moore
TITLE: Sourcing Manager
Supply Chain Management
DATE: 3/5/04

COPY MAILED 03-11-04 TO:
Clifton Forge-Waynesboro Communication
1154 Shenandoah Village Drive
BY: Waynesboro VA 22990
Falmer Branch

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**CONTRACT VA-010105-CFW
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
CLIFTON FORGE-WAYNESBORO TELEPHONE COMPANY
d.b.a. NTELOS**

1. SCOPE OF CONTRACT

The following paragraphs contain the contractual terms and conditions, hereinafter referred to as "Contract" or "Agreement," by which the Commonwealth of Virginia, hereinafter referred to as "Commonwealth" or "State", or "DIT" (Department of Information Technology) will acquire Integrated Services Digital Network (ISDN) - Primary Rate Interface (PRI) services, hereinafter referred to as "Services" on behalf of Blue Ridge Community College, Weyers Cave, VA. These Services will be provided through DIT, by the Clifton Forge-Waynesboro Telephone Cooperative, d.b.a. NTELOS, hereinafter referred to as "Contractor" or "NTELOS". This is firm fixed-price, requirements-type Contract.

2. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any commitment made by the Contractor within the scope of this Contract shall be binding upon Contractor.

For the purposes of this Contract, a commitment by the Contractor includes:

- a. Prices and options committed to remain in force over a specified period(s) of time;
- b. Any written warranty or representation made by the Contractor as to the Services to be provided, or other physical design or functional characteristics of that which is offered.

3. DELIVERY DATE

- a. Contractor shall deliver the requested Services identified in Attachment "A" ready for use, within thirty (30) days after acceptance of this Agreement by both parties.
- b. Any amendment by the State to this Contract, or any part thereof, may require the establishment of a new mutually agreed to required delivery date. The State may delay the delivery date by notifying the Contractor at least ten (10) days before the required delivery date.

- c. If the Services are not delivered/installed within the time specified in this Agreement, the State reserves the right to cancel the award of this Contract and/or terminate this Contract for default without further obligation.
- d. Neither the Contractor nor the State shall be responsible for delays resulting from acts beyond the control of each party. These include, but are not limited to, acts of God, riots, acts of war, fire, earthquakes, epidemics, or disasters.

4. VENDORS MANUAL

This Agreement is subject to the provisions of the Commonwealth of Virginia's *Vendors Manual*, and any revisions thereto, which are hereby incorporated into this Contract in their entirety. A copy of the Commonwealth's *Vendors Manual* is normally available for review at the purchasing office of any agency or institution of the Commonwealth, and can also be obtained by calling the Division of Purchasing and Supply (DPS) at (804) 786-3842, or by visiting the DPS website at <http://www.dgs.state.va.us/dps/>.

5. RISK OF LOSS OR DAMAGE

The State is relieved from all risks of loss.

6. TAXES - FEDERAL, STATE AND LOCAL

The Commonwealth of Virginia is exempt from Federal excise and all State and Local taxes. Contractor shall not include such taxes in any invoices under this Agreement. State sales and use certificates of exemption Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

7. SUBSTITUTE SERVICES

During the term of this Contract, the Contractor is not authorized to substitute any Service identified in this Agreement, or in the attachments to this Agreement, without the written permission of the Director, Acquisition Services Division, DIT. Violation of this condition shall be considered as grounds for termination of the Contract.

8. PATENT/COPYRIGHT PROTECTION

Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any equipment, software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of *Section 2.1-122* and *Section 2.1-127* of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of equipment or software furnished hereunder with any equipment or software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide noninfringing substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Product or Service.

If the use of such equipment or Software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the software, the Contractor agrees to take back the infringing equipment, software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth (as computed by this Contract and each TSO issued by DIT). This obligation is in addition to the obligations cited in the first four subparagraphs of paragraph 7., above.

9. NON-APPROPRIATION

All orders for Services and all payment obligations under this Agreement are subject to the availability of appropriated funds being available for expenditures for that purpose. In the event of nonappropriation of funds by the Legislature for the Services listed under this Contract, the Commonwealth will terminate this Contract or any individual order for those Services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed. In such event, any outstanding order shall be canceled without further obligation to the extent the affected Equipment or Services have not yet been duly delivered and accepted.

10. ASSIGNMENT

To the fullest extent permitted by law, the parties agree that Contractor's rights under this Agreement shall not be assignable, in whole or in part, to any other party without the Department of Information Technology's (DIT's) written consent, and that any purported assignment or transfer without such consent shall be null and void. If any law limits the right of the parties to prohibit assignment or nonconsensual assignments, the effective date of the

assignment shall be as follows. The Contractor shall give the DIT purchasing office prompt written notice of the assignment, signed by authorized representatives of both the Contractor and the assignee. This written notice shall be on DIT's "Assignment Notice/Payment Instruction" form and shall provide all information requested on that form. Copies of the form may be obtained from the Contracts Manager DIT. Upon DIT's acknowledgment of receipt of the properly executed form, the Assignee shall notify the Controller, DIT of the assignment and shall supply the Controller, with a copy of the properly executed form. Any payments made prior to receipt of such notification and form shall not be covered by this assignment.

In the event DIT receives any notice from a third party claiming to be an assignee of any rights of the Contractor under this Agreement, Contractor agrees that payment or other performance in respect of those rights shall not be due until at least thirty days after DIT's receipt of the notice required by the above paragraph or receipt of a similarly executed notice confirming the absence or revocation of the purported assignment. The Acquisition Services Division of DIT shall promptly notify the Contractor of any assignment notice it receives.

11. APPLICABLE LAWS AND COURTS

This Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

12. HEADINGS NOT CONTROLLING

Headings used in this Contract are for reference purposes only and shall not be considered to be a substantive part of this Contract.

13. ENTIRE AGREEMENT

This Contract constitutes the entire Agreement between the parties with respect to the subject matter of this Contract. All prior agreements, representations, statements, negotiations and undertakings are hereby superseded with respect to Services acquired by the State under the terms and conditions of this Contract.

14. MODIFICATIONS

This Contract maybe modified in accordance with Section 11-55 of the Code of Virginia. Such modifications may only be made by the representatives noted below. No modifications to this Contract shall be effective unless in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing. For purposes of the Contract, the only authorized representative for the Commonwealth shall be the Contracts Manager, DIT or his designated alternate, and for the Contractor the person identified in the signature block of this Contract.

Any Contract issued by the Commonwealth on a firm fixed-price basis may not be increased more than twenty-five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia, or his authorized designee.

15. PRICE PROTECTION/ADJUSTMENTS

The State will not pay any additional costs above those costs provided for in Attachment "A" hereto. In no event may the amount of any Contract, without adequate consideration, be increased for any purpose.

16. TERM

The initial Term of this Contract shall be for a period of thirty-six (36) months from the date of execution of this Contract and continue uninterrupted for thirty-six (36) consecutive months. At the sole discretion of the Commonwealth, this Agreement may be renewed at the prices contained herein, or less, for up to two (2) additional twelve (12) month periods. Should the Commonwealth elect to exercise this option, the Commonwealth shall notify the Contractor of its intention to renew the Contract not less than thirty (30) days prior to the expiration of the initial Term or any subsequent renewal period. Subsequent to the initial Term, and during any renewal period, the Commonwealth may terminate any one Service, or all Services, at any time to effect a migration to another system, Contract, or any other mechanism that would provide uninterrupted Services to the Commonwealth, which would be perceived as a benefit to the Commonwealth in its sole discretion.

17. ETHICS IN PUBLIC CONTRACTING

Contractor certifies that their bid has been made without collusion or fraud and that they have not offered or received kickbacks or inducements from any other bidder, supplier, manufacturer, or subcontractor, in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

18. ANTI-DISCRIMINATION

Contractor certifies to the Commonwealth that they will conform to the provisions of the *Federal Civil Rights Act of 1964*, as amended, as well as the *Virginia Fair Employment Contracting Act of 1975*, as amended, where applicable, the *Virginians with Disabilities Act*, the *Americans with Disabilities Act* and §11-51 of the *Virginia Public Procurement Act*.

In every contract over \$10,000 the provisions in a. and b. below apply:

- a. During the performance of this contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - 2) The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
- b. The contractor will include the provisions of a. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

19. DEBARMENT STATUS

Contractor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of Services covered by this Contract, nor are they an agent of any person or entity that is currently so debarred.

20. ANTITRUST

By entering into this Contract, Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, titles and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or Services purchased or acquired by the Commonwealth of Virginia under said Contract.

21. PAYMENT

a. To Prime Contractor:

- 1) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number, and social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

- 2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers if discounts for payment in less than 30 days, however.
- 3) All Services provided under this Contract or purchase order, which are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.
- 4) The date of payment shall be deemed to be the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the *Virginia Debt Collection Act*.
- 5) Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoice charges. Charges that appear to be unreasonable will be researched and challenged and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify Contractor, in writing, as to those charges that it considers unreasonable and the basis for the determination. Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges, which are not in dispute (Code of Virginia, § 11-69).

b. To Subcontractors:

- 1) The Prime Contractor under this Contract is hereby obligated:
 - a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - b) To notify the agency and the subcontractor(s), in writing, if the Contractor's intention to withhold payment and the reason.
- 2) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (ii) above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary Contract. The Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

22. QUALIFICATIONS OF VENDOR

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the vendor to perform the Services, and the vendor shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect the vendor's physical facilities before award to satisfy any questions regarding the vendor's capabilities. The Commonwealth further reserves the right to reject any bid for proposed Services, if the evidence submitted by, or investigations of, such vendor fails to satisfy the Commonwealth that the vendor is properly qualified to carry out the obligations of the Contract and to provide the Services delineated herein.

23. CONTRACTUAL RECORDS

All Contractual books, records and other documents related to matters under this Contract shall be made available by Contractor to the State and its designated agents for a period of five (5) years after final payment for purposes of audit and examination.

Contractual records are hereby further defined as this Contract and all invoices or correspondence directly relating to this Agreement.

24. LIABILITY

To the maximum extent permitted by applicable law, the Contractor will not be liable under this Contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. This limitation of liability will not apply, however, to liability arising from: Personal injury or death; defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or Circumstances where Contract expressly provides a right to damages, indemnification or reimbursement.

25. CONTINGENT FEE WARRANTY

Contractor warrants that he/she has not employed or retained any person or persons not generally associated with Contractor for the purpose of soliciting or securing this Agreement. Contractor further warrants that he/she has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon the award or making of this Agreement. For breach of one or both of the foregoing warranties, the Commonwealth shall have the right to terminate this Agreement without liability, or in its discretion, to deduct from the agreed fee, payment or consideration, or otherwise recover, the full amount of said prohibited fee, commission, percentage, brokerage fee, gift, or contingent fee.

26. ACCEPTANCE, TESTING AND COMPLIANCE WITH SPECIFICATIONS

All Services (each installation) are subject to inspection and testing by the State, and any which do not meet or exceed the specifications or other requirements of the Contract may be rejected. The State shall be given seventy-two (72) consecutive hours from the completion of installation by the Contractor to test, evaluate and accept the Services delivered or furnished under this Contract (provided that the using agency, in its sole discretion, may accept the same prior to expiration of the seventy-two (72) hour period). If the Contractor's Services fail to meet the Contract specifications or those required by the Contractor's own technical documentation, then the same may be rejected. Such rejection may, at the Commonwealth's discretion terminate this Contract, or any portion thereof, and exempt the State from all costs incurred by the Contractor.

Acceptance shall be effective for the purpose of making payment for Services delivered, however, acceptance by the State following testing and evaluation during the seventy-two (72) consecutive hour period shall not be conclusive that the Services conform in all respects to the Contract specifications and other requirements. In the event that nonconformance therewith is discovered by the State after acceptance, whether due to a latent defect or otherwise, the Contractor shall take whatever action is necessary to conform the Services to the Contract specifications and other requirements, including but not limited to modification or replacement of the same. The Contractor's failure to do so shall constitute breach of Contract for which the State may exercise the remedies provided in the section herein entitled "*Termination and Cancellation*," in addition to and not in lieu of any other remedies available under Virginia law.

27. TERMINATION AND CANCELLATION

The Commonwealth shall have the unilateral right to terminate this Contract for Default, in the event that any one or more of the following events of default occur or continue during the term of this Contract:

- a. Contractor fails to deliver the Services required by this Contract or;
- b. Contractor repeatedly fails to respond to requests for maintenance or other services within the time limits set forth in the Contract or;
- c. Contractor breaches any of the other terms set forth within this Contract or;
- d. Contractor fails to cure any breach after receiving a "Show Cause Notice" identifying the failure, and providing the Contractor ten (10) days to cure the failure/non-performance. If the Contractor fails to answer the cure notice, or does not correct the deficiencies noted, the State may immediately terminate the Contract for Default.

In such events, the Commonwealth will only be liable for costs incurred to the date of termination.

The Commonwealth's failure to exercise its right to terminate for Default under this provision shall not be construed as a waiver of its right to terminate, rescind or revoke this Contract in the event of any subsequent breach of any provisions of this Contract.

28. FAILURE TO DELIVER

In the event the Contractor fails for any reason to deliver in a timely manner or according to Contract terms the Services set forth herein, Commonwealth may, in its own discretion, give Contractor oral or written notice of such breach. Once notice by the State is sent or given, then the State may immediately procure the Services from another source. Once the State has effected a purchase from an alternate source (in accordance with the *Virginia Public Procurement Act*), then the parties agree that the State may charge-back the Contractor, in which case the Contractor agrees to reimburse the State for any difference in cost between the original Contract price and the State's cost to cover Services from the alternate source. In no event shall the State be held to pay the Contractor any costs incurred by the Contractor, including but not limited to ordering, marketing, manufacturing, or delivering the Service(s) that are subject of the State's notice of breach.

This remedy is in addition to and not in lieu of any other remedy the Commonwealth may have under this Contract and the laws of the Commonwealth of Virginia.

29. DEFAULT

In case of failure to deliver Services in accordance with the Contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Commonwealth may have.

30. DISPUTES

Contractual claims whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a Contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the Services. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The public body will render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

A Contractor may not institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that Agency fails to render such decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under

Section 11-70, Code of Virginia or Administrative Appeals Procedure Section 11-71, Code of Virginia.

Any dispute, claim or cause of action filed by Contractor (or any party making such claim on behalf of or under the rights of Contractor, his agents or any subcontractor) shall be governed by Sections 11-69, 11-70, 11-71, Code of Virginia (1950), as amended, and any period of limitation set forth therein.

31. BILLING AND INVOICING

Each month, the Contractor shall deliver one consolidated bill for all Services purchased from this Contract during the prior billing period to the following address:

Department of Information Technology
ATTN: Accounts Payable
110 South 7th Street, 3rd Floor
Richmond, Virginia 23219

Each monthly bill must include, at minimum, monthly recurring charges, other charges and credits (one time installation charges and partial monthly billing), etc. Invoices shall also provide:

1. Type and description of the Service;
2. Charge for each item (Service);
3. This Contract Number, and;
4. Contractor's Federal Identification Number (FIN).

Failure to submit adequate billing detail will result in non-payment of the invoice.

All payments under this Agreement shall be billed monthly in arrears, and all invoices will be paid in accordance with the Paragraph 28. *Prompt Payment*. No invoice may include any costs other than those identified herein in the Schedule. Invoices shall provide at a minimum:

NO INVOICE MAY INCLUDE ANY COSTS OTHER THAN THOSE IDENTIFIED IN THE SCHEDULE.

32. PROMPT PAYMENT

Payment shall be due within thirty (30) days after: (a) acceptance of each month's bill/ invoice, (b) receipt of a correct invoice for such payment, and (c) when applicable, receipt of the payment instruction form referenced in the paragraph entitled ("*Assignments*"), whichever is latest. Where payment is made by mail, the date of postmark shall be deemed to be the date of payment. Any amounts due the Commonwealth under the terms of this Contract may be applied against Contractor's invoices with appropriate information attached.

In accordance with the Virginia Public Procurement Act, all proper charges for which payment is more than seven (7) days overdue shall accrue interest as provided in Sections 11-62.1 through 11-62.9 of the Code of Virginia. The rate of interest shall be determined in accordance with Section 11-62.5 of the Code of Virginia. In no event shall any interest penalty accrue when payment is delayed because of a disagreement between the Commonwealth and the Contractor regarding the quantity, quality or time of delivery of any Product or Service or the accuracy or correctness of any invoice. The Contractor shall notify the Controller, DIT of all invoices that are in excess of thirty (30) days old.

33. THIRD PARTY BILLING

All Services provided under this Contract, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.

34. CREDITS

Any credits due to the Commonwealth under the terms of this Contract may be applied against the Contractor's invoices for the Commonwealth with the appropriate information attached.

35. PAYMENTS TO SUBCONTRACTORS

In accordance with Section 11-62.11 of the Code of Virginia, within seven days after receipt of amounts paid to the Contractor by the Commonwealth for work performed by a subcontractor, the Contractor shall

- a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor, or
- b. Notify the agency and subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor shall pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from the Commonwealth for work performed by the subcontractor, except for amounts withheld as allowed in (b) above. The Contractor shall provide its federal employer identification number (or social security number, if Contractor is an individual) to the Commonwealth as required by Section 11-62.11(2) of the Code of Virginia. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent per month. The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to be subject to the same payment and interest requirements with respect to each lower-tier subcontractor. Nothing in this paragraph shall be construed as creating any obligation on the part of the Commonwealth or as authorizing any additional charge to the Commonwealth.

36. PRIORITY OF SERVICE (DELIVERY)

The Commonwealth of Virginia requires that Contractor provide delivery equal to or better than that provided its commercial and retail customers. Contractors failing to comply with this provision are advised that such action shall be considered grounds for termination of this Contract. Contractors whose agreements are terminated for such action may be placed on DIT's list of Debarred/Ineligible bidders in accordance with *Section 7.20* of the Division of Purchases and Supply's *Vendor's Manual*, dated December 1998.

37. TERMINATION FOR CONVENIENCE

The Department of Information Technology (DIT), may at its sole option and discretion, cancel all or any portion of the Services set forth in this Contract at any time such action is deemed to be in the best interest of the Commonwealth of Virginia.

The Contractor shall be given thirty (30) days written notice of any such request for termination.

By execution of this Agreement, Contractor agrees that in the event of termination for convenience, there shall be no termination costs or charges due.

The Commonwealth makes no assurances that any Service purchased under this Contract will remain in service for any minimum amount of time.

38. PURCHASE OPTION

At any time during the term of this Agreement, the Commonwealth may increase the quantity of items or features purchased under this Agreement by sending the Contractor a written Delivery Order to that effect, signed by the Commonwealth's Contracts Manager, or their authorized representative. The purchase price shall be the lower of the unit cost identified in any executed Attachment or the Contractor's then-current, published price. The foregoing shall not apply to Services provided to the Commonwealth at no charge. The delivery schedule for any items added by exercise of this option shall be set by mutual agreement.

Items not listed on any executed Attachment to this Agreement may be purchased under this Agreement if a duly authorized representative of both parties executes a Delivery Order that references this Agreement and specifies a mutually agreeable delivery schedule and price. However, any such purchases must be processed in accordance with the provisions of the *Virginia Public Procurement Act* prior to execution by the Commonwealth.

39. NONVISUAL ACCESS TO TECHNOLOGY

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the

"Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Agreement:

- (i) Effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
- (ii) The Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user for the Technology interacts;
- (iii) Nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public: and
- (iv) The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual, and (ii) nonvisual equivalence is not available.

Installation of hardware, software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the *Information Technology Access Act § 2.1-807 through § 2.1-811 of the Code of Virginia*.

40. SERVICES WARRANTY

Contractor shall install, deliver, and maintain the Services in accordance with any applicable tariffs filed with and approved by the Virginia State Corporation Commission. In the absence of such tariffs, the following conditions apply:

- a. The service shall be warranted to operate free from failure and shall be available for use by the Commonwealth twenty-four (24) hours per day, seven (7) days per week, including weekends and holidays. The cost of this Warranty is included in the monthly recurring price, for each Service as quoted herein for each Service.

- b. The Contractor shall respond to reports of interruptions of Services within one (1) hour after receipt of notification from the Commonwealth. The Contractor's response may be on-site or from a remote location based on the Contractor's determination of the source of the failure. If an on-site response is required, the Contractor's repair personnel shall be on-site and working to restore service within four (4) hours after receipt of the initial report of the failure. The Contractor shall restore service to normal operation within eight (8) hours after the initial report of the failure.
- c. Contractor shall furnish this On-Site warranty service twenty-four (24) hours per day, seven (7) days per week for the duration of this Agreement at no cost to the State. The Warranty covers all travel, labor, and parts.

41. CREDITS FOR DENIAL OF SERVICE

The Commonwealth shall be rebated, or credited, a prorated portion of the applicable monthly service charges for each occurrence during which the Commonwealth is denied use of the Services for eight (8) hours or more during any consecutive twenty-four hour period. The rebate, or credit, shall apply to the initial eight-hours, and all additional hours during which the State is denied access to the Services.

42. TROUBLE REPORTING

Contractor shall provide a single point of contact for the reporting of service problems encountered by the Commonwealth while using the Services. The point of contact shall be staffed and available twenty-four (24) hours per day, seven (7) days per week, including weekends and holidays.

43. FIELD MODIFICATIONS AND/OR ENGINEERING CHANGES

The Commonwealth agrees that Contractor sponsored modifications and/or engineering changes, at the discretion of the Contractor, may be made with the consent of the Commonwealth, at no additional charges, between the hours of 8:00 a.m. and 5:00 p.m. EST, State holidays during the term of Contract. The State reserves the right at all times to schedule these Contractor-sponsored modifications and/or changes to minimize the impact on the daily operations of the State.

44. UNIVERSAL SERVICE FUND

The Contractor agrees to make available to all requesting Universal Service Fund (USF) participants, all products and Services as listed and priced herein. Contractor agrees to provide the Products and Services directly to the USF participant, and to bill each USF participant directly. Contractor agrees and understands that the responsibility for collection of all charges incurred, and the responsibility for resolving all Product and Service problems as

well as administration of said Contract for USF participation shall be the sole responsibility of the Contractor.

Contractor warrants that it is qualified under applicable Federal Communications Commission and Virginia State Corporation Commission rules to apply for and receive USF allocations/disbursements for services provided pursuant to this Contract to agencies and entities and users which are eligible for those allocations/disbursements on behalf, and for the benefit, of those agencies and institutions. The Contractor also agrees to maintain those qualifications, and to assist agencies and entities in applying for and receiving these allocations/disbursements.

45. DRUG-FREE WORKPLACE

During the performance of this Contract, the Contractor agrees to:

- (i) Provide a drug-free workplace for the Contractor's employees;
- (ii) Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- (iii) State in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and
- (iv) Include the provisions of the forgoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

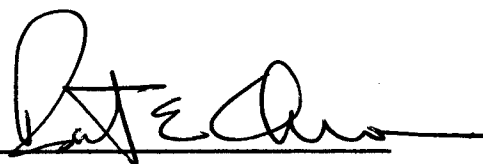
"Drug-free workplace" means a site for the performance of work done in connection with this Contract, wherein the Contractor's employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of the Contract.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

CLIFTON FORGE-WAYNESBORO
TELEPHONE COOPERATIVE
d.b.a. NTELOS

BY: 

COMMONWEALTH OF VIRGINIA

BY: 

NAME: Michael L. Paul

TITLE: Major Account Executive

DATE: 2/26/01

NAME: Robert E. Gleason

TITLE: Contracts Engineer

DATE: 3/02/01

ATTACHMENT "A"
CONTRACT VA-010105-CFW

This Attachment A is hereby incorporated into and made an integral part of, and attached to, Contract Number VA-010105-CFW between the Commonwealth of Virginia, hereinafter referred to as "Commonwealth" or "State", or "DIT" and Clifton Forge-Waynesboro Telephone Cooperative, d.b.a. NTELOS, hereinafter referred to as "Contractor," or NTELOS.

PRICING SCHEDULE

Item #	Description	Unit	Unit Price	Monthly Extended Price
1	Three (3) digital PRI/ISDN Circuits (Monthly rate): 1 – Harrisonburg 1 – Staunton 1 – Waynesboro	Ea	\$551.00	\$1,653.00
2	280 Direct Inward Dial (DID) Numbers (14 blocks of 20 numbers)	Block	\$ 10.00	\$ 140.00
3	Caller ID (Monthly rate)	Ea	No Charge	No Charge

Total Monthly Price

\$1,793.00

DELIVERY/INSTALLATION INSTRUCTIONS

1. For delivery/installation of PRI/ISDN lines and other Services provided by the Contractor on campus premises, the "*point of demarcation*" shall be the Campus Telecommunications Equipment Room located in Building G, Room G207, 1 College Lane, Weyers Cave, Virginia 24486-0080.
2. Contractor shall be responsible for cross-connecting all provided circuits to the agency's in-place telecommunications system to provide Services in the location identified by the Agency.

3. Contractor shall be responsible to fully test the installed Services to certify that the Services and all features are functioning properly.
4. During delivery/installation, Contractor shall not interfere with the current operational telephone system and/or telecommunications systems in a manner that would cause operational outages. In the event that temporary modifications to the existing telephone and/or cabling systems becomes necessary to complete the installation of the new service, the Contractor shall notify the on-site contact person of such need in order to schedule a mutually agreeable time for the state to have the modifications completed.
5. Contractor shall be responsible for obtaining all right-of-way licenses, and/or permits required by applicable authorities in order to deliver/install Services.